

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA :
: CR CASE NO. 06-73 GMS
vs. :
: :
DION L. BARNARD :
Defendant :
:

SUPPMELNTAL MOTION TO ALLOW DEFENSE
RE-TESTING/RE-WEIGHING DRUG EVIDENCE

COMES NOW, the Defendant, Dion L. Barnard by and through his attorney, Joseph A. Ratasiewicz, Esquire, and respectfully requests this Honorable Court, pursuant to Rule Federal Rule of Criminal Procedure 16(C), enter an order requiring the Government to permit Defendant, Dion L. Barnard, to conduct an independent re-weighing of the drug evidence seized in the above captioned criminal action.

1. Defendant, Dion L. Barnard, is charged with one (1) Count of Possession with Intent to Distribute Cocaine Base in violation of 21 U.S.C. §841 (a) (1) and (b) (1) (A).

2. The alleged controlled substance seized in the subject criminal action was analyzed by the Drug Enforcement Administration's Northeast Regional Lab in New York and the results of the analysis indicate that the alleged controlled substance is purportedly cocaine base.

3. Pursuant to Federal Rule of Criminal Procedure 16(C), tangible objects that are in the government's possession, custody or control and that are material to the preparation of a Defendant's defense and that are intended for use by the government as evidence in chief-at-trial are subject to inspection by the defense prior to trial.

4. Defendant submits that the alleged cocaine base in the subject criminal action is evidence that the government would use in its case-in-chief at trial or at a Sentencing Hearing. Furthermore, it is submitted that an independent re-weighing/re-testing of the alleged controlled substance in the case at bar is material to the preparation for Defendant's trial and/or Sentencing.

5. Counsel for Defendant Barnard is in the process of retaining an independent forensic chemist or toxicologist to conduct an independent re-weighing/re-testing of the alleged controlled substance seized in Count I of the Indictment of the subject case. Counsel will provide the Court and the Government with the name of the forensic chemist or toxicologist upon officially retaining an appropriate expert.

6. Defendant Barnard requests that he be permitted to conduct an independent re-weighing/re-testing of the alleged controlled substance seized in Count I of the Indictment of the subject criminal action.

WHEREFORE, Defendant Barnard respectfully requests that this Honorable Court enter an Order requiring the Government to permit him to conduct an independent re-weighing/re-testing of the alleged controlled substance seized in Count I of the Indictment of the subject criminal action.

Respectfully submitted:

FRONT STREET LAWYERS, P.C.

BY: 

JOSEPH A. RATASIEWICZ, ESQUIRE

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Attorney for Defendant

Dion L. Barnard

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O R D E R

AND NOW, TO WIT, this _____ day of _____, 2007, Defendant, Dion L. Barnard's Supplemental Motion for Independent Re-Weighing/Re-Testing of Drug Evidence pursuant to Federal Rule of Criminal Procedure 16(C) having been duly heard and considered,

IT IS SO ORDERED:

That the Government is hereby **ORDERED** to permit Defendant, Dion L. Barnard to conduct an independent re-weighing/re-testing of the drug evidence seized in Count I of the Indictment in the above-captioned criminal action by an independent forensic chemist or toxicologist within thirty (30) days of the date of this Order.

HONORABLE GREGORY M. SLEET

Date: _____

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CERTIFICATE OF SERVICE

I, Joseph A. Ratasiewicz, Esquire, attorney for Dion L. Barnard, do hereby certify that on this 10th day of May, 2007, the attached Supplemental Motion for Re-Weighing/Re-Testing of Drug Evidence pursuant to Federal Rule of Criminal Procedure 16(C) was mailed via 1st Class U.S. Mail Postage Prepaid to the following:

*Shannon Thee Hanson, Esquire
eighing U.S. Department of Justice
U.S. Attorney's Office, District of Delaware
The Nemours Bldg.
1007 North Market Street, Suite 700
P.O. Box 2046
Wilmington, Delaware 19899-2046*

Respectfully submitted:
FRONT STREET LAWYERS, P.C.

BY: 
JOSEPH A. RATASIEWICZ, ESQUIRE
Attorney for Defendant

Date: May 10, 2007